

# Public-Private Partnerships in Virginia

Fiscal Analytics, Ltd  
VML Steering Committees  
July 28, 2016

# Public-Private Transportation Act of 1995

- É The PPTA authorizes “Responsible Public Entities” to contract with private entities to design and construct transportation facilities that “address the needs identified in the appropriate state, regional, or local transportation plans.”
- É Proposer must meet certain competency requirements for submission and propose reasonable financing plans.
- É Must also meet RPE “guidelines” for acceptance and review of a proposal before “comprehensive agreement” reached.
  - Guidelines form most of the basis for review and acceptance of proposals. State guidelines have been often revised, last in 2016.
  - The processes outlined in state guidelines may be used by other RPEs, including local governments and transportation authorities, if adopted in accordance with the PPTA and regulations of the authority having jurisdiction over the project.
- É Solicited and unsolicited proposals are allowed.

# History of the PPTA

- “ 1995 PPTA Act was a modification of the 1988 Highway Corporation Act and 1994 Qualifying Transportation Facilities Act.
  - Dulles Greenway built under 1988 Act.
- “ The PPTA is an evolving process of implementing (and determining) transportation policy in Virginia. Highlights of amendments to the 1995 law include:
  - 2002 changes to conform to public procurement laws.
  - 2005 changes allowing interim agreements.
  - 2008 changes requiring project proposers in excess of \$50 million pay costs for an independent audit of any and all traffic and cost estimates, and review all public costs and potential liabilities to which taxpayers could be exposed.
  - 2015 changes establishing the Transportation Public-Private Partnership Advisory Committee, made up of both executive and legislative members, to determine whether a project meets the finding of public interest.
- “ State implementation guidelines have been formally modified six times since 2005.

# PPTA Process

- “ Fundamentally, the P3 process determines whether shifting the risk to the private sector any or all design, build, finance, operate, and maintaining of a transportation project is in the public interest.
- “ Screening and evaluating whether projects are in the public interest includes:
  - Receiving solicited or unsolicited proposals.
  - Screening proposals first through high and then more detailed level screenings to determine whether they bring value by procuring through the PPTA. The agencies, affected localities, and appropriate General Assembly members are notified of the Oversight Board's screening findings.
  - The development phase establishes the scope and feasibility of a project and prepares the project for procurement, including information requests, cost and economic benefit estimates, project delivery schedules, risk analysis, value for money analysis, and business terms. Stakeholders are provided opportunities to comment and receive information.
  - PPTA project procurement phase includes issuing a Request for Qualifications (RFQ) to short-listing qualified respondents, and issuing a Request for Proposals (RFP). The project procurement process results in the selection of a Preferred Proposer.

# Possible PPTA Benefits

- “ Timely delivery and efficient construction of a project.
- “ Risk transfer to the private sector.
- “ Greater incentive to innovate.
  - Companies fully responsible for cost overruns have an incentive to innovate.
- “ Leveraging public funds with private capital.

# PPTA Projects in Virginia

- “ Six PPTA projects have been completed or nearly completed: Route 895 Pocahontas Parkway, Route 288, Route 199, I-95/495 HOT Lanes, Route 58, Route 28
- “ P3 Projects Under Construction include the Elizabeth River Crossing Project (Midtown-Downtown tunnels), Coalfields Expressway.
- “ Project under procurement: I-66 corridor from U.S. Route 15 in Prince William County to I-495 in Fairfax County.

# PPTA Project Considerations

- “ What is the price paid for shifting risk to the private sector?
  - Majority of risk for I-895 development was on private sector (although tax-free debt used).
  - I-495 Hot Lanes put \$349 mil. private equity for managed lanes next to free lanes.
  - While Elizabeth River Crossing put in \$272 mil., they negotiated automatic 3.5% (or CPI) toll escalators and non-compete clauses for future free lanes.
- “ Reduced number of contractors may bid on the project, depending on assumed risk, competitive level, and complexity.
  - Elizabeth River crossing only had 1 bidder making value for money difficult to evaluate.
- “ Does using PPTA provide faster completion, innovative design and financing that preserves public bond capacity and credit ratings and have sufficient private equity that shares risk and still provides value for money?
- “ Ensure independent review of PPTA proposals, without optimism bias.
  - CTB and other transportation-related governing boards have no *statutory* role in the PPTA process, and are only referred to as “oversight boards” in the PPTA implementation guidelines.
- “ Public should be informed of all major business points before final agreement is signed.
  - Still unclear how PPTA project development occurs in relation to NEPA environmental reviews and process for determining level of state subsidy.

# Public-Private Education Act

- “ The Public Private Education and Infrastructure Act of 2002 (PPEA) sought to speed up the process of procuring school buildings, equipment and other infrastructure for the public good. Subsequent PPEA revisions expanded the definition of infrastructure to include information technology.
- “ It has allowed private entities to "acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects" and encourages innovative approaches to financing construction and renovation.
- “ The law created resources to fund a comprehensive range of projects, including schools, wastewater treatment plants, and telecommunications infrastructure - essentially any type of public venture, if private involvement provides the project in a more timely or cost-effective fashion, lead to productivity or efficiency improvements in the public entities' processes or delivery of services, considering the complexity or priority of the project; risk sharing including guaranteed cost or completion guarantees; added value or debt or equity investments proposed by the private entity; or an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.
- “ Businesses interested in submitting a PPEA proposal to state agencies must abide by the most current procedures. See Department of General Services PPEA guidelines - <http://www.dgs.virginia.gov/PPEA/tabid/62/Default.aspx>



# PPEA Guidelines

There are three unique aspects of the PPEA process as compared to a normal procurement process and they also introduce a different degree of risk to the process. These include:

1. Allowing private entities to give public entities unsolicited proposals to deal with facilities and infrastructure needs;
2. Having private entities offer financing proposals other than the use of the public entity's resources; and
3. Finally, requiring each public entity to develop its own guidelines to deal with proposals under the PPEA.

“ Senate Bill 1153, passed during the 2009 legislative session, provides for the annual review of PPEA Model Guidelines by a joint work group to make revisions as needed and the development of best practices recommendations for use by public entities.

# PPEA Project Examples

- “ Renovation of Capitol Square Buildings
- “ Hancock Geriatric Treatment Center at Eastern State Hospital
- “ VITA contract for IT services with Northrup Grumman
- “ Department of Forensic Sciences laboratory and morgue facility in Northern Virginia.
- “ Various state VADOC correctional centers
- “ George Mason Environmental Science Center, student housing
- “ Construction of 5 new schools in Norfolk under a PPEA comprehensive agreement.

Examples of other *potential* PPEA projects:

- “ Unsolicited proposal for a light rail project in VA Beach
- “ Cell towers, broadband expansion, solar energy -- using road right of way.
- “ Leased airspace above transit facilities, highways
- “ Bundle projects with other localities. Private entity may have built template for previous projects that lower risk and cost.
  - Raw water and stormwater projects
  - Airport runway maintenance
  - Brownfields assessment and remediation

# PPEA Project Considerations

- “ Public-private partnerships still require the expenditure of public funds.
  - ó Identify potential savings and subject to rigorous analysis.
  - ó For a large public entity with excellent access to credit markets, it may be more cost effective to rely on internal financial resources.
  - ó The use of developers for most capital projects -- except the most complex -- adds another layer of cost without much benefit.
- “ Private partner should have experience working on a PPEA project:
  - ó Private entity must understand the public entity's budgeting process, timetable, and constraints ó including FOIA.
  - ó Look for a private entity that understands the public entity's business from an operational perspective.
  - ó Look for a private entity that understands the governing body's position on the proposed project.
- “ Public entity: Need staff (A/E, procurement, legal, communications, other technical) experienced in working a PPEA deal ó don't have it, look to other public entities for assistance or hire a consultant.